her intentions were the best in the world. This decision was brought to the attention of the court in the instant case, and was distinguished on the ground that crime is of public concern while the private affairs of an individual are not. While this is a possible distinction, society would seem to be just as interested in the prevention of an unfortunate marriage as in the prevention of a crime. The former impairs the efficiency of at least two members of society, frequently leads to divorce, which involves needless litigation, and is conducive to crime itself. It is interesting to note that the English cases are in accord with the instant case, *Stuart* v. *Bell, supra,* but seem to be out of harmony with *Byam* v. *Collins. Cf. Coxhead* v. *Richards* (1846) 2 C. B. 569; *Davies* v. *Snead* (1870) L. R. 5 Q. B. 608.

MARRIAGE—ANNULMENT—FRAUD.—Plaintiff consented to enter a civil marriage ceremony on the defendant's promise subsequently to have a religious ceremony performed. The defendant at the time did not intend to carry out his promise and after the civil marriage refused to perform. The defendant did not cohabit with nor support the plaintiff. In a suit to annul the marriage, *held* for the plaintiff. *Rubinson* v. *Rubinson* (N. Y. 1920) 110 Misc. 114, 181 N. Y. Supp. 28.

A marriage is voidable in New York because of fraud and may be annulled except in case of voluntary cohabitation after full knowledge thereof. Dom. Rel. Law, Laws of 1909 c. 19, § 7 (4); Code Civ. Proc. § 1750. Most courts agree that a material misrepresentation of fact, which induces a marriage, is sufficient to constitute fraud. See *Johnson* v. *Johnson* (1912) 176 Ala. 449, 58 So. 418. But they have generally held that only such misrepresentations are material as go to the competency of the parties to contract and to fulfill the obligations of the contract. See *Lyon* v. *Lyon* (1907) 230 Ill. 366, 82 N. E. 850; but *cf. Browning* v. *Browning* (1913) 89 Kan. 98, 130 Pac. 852. The New York courts however hold that "fraud" includes all such misrepresentations as would have caused the consent of the defrauded party to have been withheld, if known. See *Domschke* v. *Domschke* (1910) 138 App. Div. 454, 122 N. Y. Supp. 892. This practically places marriage contracts on the same basis as ordinary contracts. See *Kujek* v. *Goldman* (1896) 150 N. Y. 182, 44 N. E. 773. But it has been suggested, and it would seem with good reason, that not all facts should be of sufficient weight to secure annulment, simply because made material by the parties. See *Sobol* v. *Sobol* (1914) 88 Misc. 277, 150 N. Y. Supp. 248. The ultimate judge of materiality should be the court with an eye to sound public policy and the peculiar nature of the contract. Further, the tendency of courts to extend more aid to a defrauded party before the marriage status has been definitely assumed would also seem to be reasonable, since until cohabitation commences the relation is little more than a contract. See *Williams* v. *Williams* (1911) 71 Misc. 590, 130 N. Y. Supp. 875; *Svenson* v. *Svenson* (1904) 178 N. Y. 54, 57, 70 N. E. 120. Perhaps the reason the New York courts have extended the scope of "fraud" so liberally is that it is so difficult in that state to avoid the marriage status once it has been assumed.

MASTER AND SERVANT—CHARITABLE CORPORATIONS—TORT LIABILITY.—The plaintiff's intestate suffered injuries through the negligence of medical attendants while a patient in the defendant hospital, a charitable corporation. The attendants had not been selected with due care. In a tort action, *held,* the defendant was not liable. *Roosen* v. *Peter Bent Brigham Hospital* (Mass. 1920) 126 N. E. 392.

In the leading and probably the earliest American case on this subject, *McDonald* v. *Massachusetts General Hospital* (1876) 120 Mass. 432, the court decided that a charitable corporation was not liable for the negligence of its assistants, but added language by way of *dictum* which would seem to indicate that it would be liable if due care were not used in their selection. This *dictum,* so interpreted, has been widely followed and probably represents the weight of authority to-day. *St. Paul's Sanitarium* v. *Williamson* (Tex. 1914) 164 S. W. 36; *Illinois Cent. Ry.* v. *Buchanan* (1907) 126 Ky. 288, 103 S. W. 272; *contra, Adams* v. *University Hospital* (1907) 122 Mo. App. 675, 99 S. W. 453. And at least one jurisdiction, going still farther, now holds that a charitable corporation is liable even though it exercised due care in the selection of its assistants. *Tucker* v. *Mobile Infirmary Ass'n.* (1915) 191 Ala. 572, 68 So. 4. The ground of the decision in the *McDonald* case was that trust funds cannot be diverted from the charitable purposes designated by the donor to the payment of damages. This being so, it is difficult to see why it is material whether or not the trustees were negligent in selecting their assistants. See *Adams* v. *University Hospital, supra,* 675, 686; 7 Columbia Law Rev. 353, 354. And so it seems that the instant case, which overrules the frequently cited *dictum* in the *McDonald* case, is perfectly consistent with the trust fund theory. The view taken by the Alabama court in the *Tucker* case, however, is believed to be the fairest. Some negligence on the part of physicians and nurses is inevitable. It therefore seems just and reasonable that damages for such negligence should be considered legitimate operating expenses of a charitable hospital. And the donor of the trust funds may well have contemplated that part of these funds should be used to compensate injured beneficiaries. See *Hewitt* v. *Woman's Hospital* (1906) 73 N. H. 556, 64 Atl. 190.

MASTER AND SERVANT—FEDERAL EMPLOYERS' LIABILITY ACT—"EMPLOYEE".—The W. M. R. Co. ran a line from H to L in Maryland and there connected with the defendant line running from L to R in Pennsylvania. The two lines operated under an agreement whereby the trains of one manned by crews primarily employed by it were permitted to run over the track of the other. The plaintiff was hired by the W. M. R. Co. but was injured while on the track of the defendant and engaged in "picking up" cars under the direction of the defendant's yardmaster. *Held,* Justice Clark dissenting, the defendant is not liable because the plaintiff was not "employed by it" within the federal Employers' Liability Act. *Hull* v. *Philadelphia & Reading Ry.* (U. S. Sup. Ct. Oct. Term, 1919, No. 151, April 19, 1920).

In order to recover as an "employee" within the federal Employers' Liability Act, U. S. Comp. Stat. (1916) § 8657, 35 Stat. 65, the plaintiff must show that the relation of master and servant existed between the defendant and himself. *Chicago R. I. & P. Ry.* v. *Bond* (1916) 240 U. S. 449, 36 Sup. Ct. 403; see *Wagner* v. *Chicago & A. R. R.* (1914) 265 Ill. 245, 250, 106 N. E. 809. The test of the existence of that relationship is—Is the plaintiff engaged in the defendant's affairs? See *Standard Oil Co.* v. *Anderson* (1909) 212 U. S. 215, 221, 29 Sup. Ct. 252. If so, the plaintiff is his servant. To determine whose affairs the plaintiff was engaged in—in other words, to discover the *entrepreneur* upon whom the loss is to fall as a part of his operating expense —various factors of the agreement must be considered. See 20 Columbia Law Rev. 333. The dissenting justice quite correctly points